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LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 12th March 2007

No. 2256 — II/ 1(S) - 45/1999 - L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th February 2007 in I. D. Case No. 38 of 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of GRIDCO of Orissa Ltd. through the Executive Engineer (WESCO), Bolangir Electrical Division, At/Post Bolangir, District Bolangir and its workman Shri K. B. Mallick, son of late Satrughna Mallick, At Chikhalpahal, Post Sikachhnda, P. S. Sadar, Bolangir, District Bolangir was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE NO.38 OF 2002
Dated the 6th February 2007

Present :

Shri P. K. Mohapatra, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of GRIDCO of Orissa Ltd. First Party—Management
through the Executive Engineer (WESCO),
Bolangir Electrical Division,
At/P.O. Bolangir,
District Bolangir.

And

Its Workman Shri K.B. Mallick,
S/o Late Satrughna Mallick,
At Chikhalpahal,
P. O. Sikachhnda,
P.S. Sadar, Bolangir,
Dist. Bolangir.

Appearances :

For the First Party — Management Shri Sankar Pradhan, Deputy
Manager, HRD.

For the Second Party— Workman Self

1984 Ex GAZ

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 for adjudication of disputes vide memo No. 5921 (5)-L. E., dated the 10th May 2002 scheduled below:

"Whether the refusal of employment of Shri Kunja Bihari Mallick, N.M.R. employed in Chudapali Electrical Section by the Executive Engineer, Bolangir Electrical Division with effect from April, 1991 is legal and/or justified ? If not, what relief Shri Mallick is entitled to ?"

2. The workman has filed a statement of claim wherein he has averred that he was working as a N.M.R. and C. L. R. from 1986 till March, 1991 and at the time of retrenchment no notice was served and compensation was paid to him and even thereafter some of the co-workers were absorbed in the regular cadre and in spite of several requests, the management did not care for it and paid a deaf ear to it. In this connection he had raised a dispute in the office of the District Labour Officer of Bolangir and it was taken up for conciliation, but the management even after taking several adjournments did not co-operate with the Conciliation Officer for settlement of the dispute, as a result, the Conciliation Officer-cum- Assistant Labour Officer presented a failure report to the Government and then the Industrial Dispute was referred to this Court for adjudication. In it, the workman has prayed for reinstatement in service w.e.f. the 1st April 1991 with back wages.

3. The Executive Engineer of Bolangir Electrical Division has contested the above claim by stating that the alleged refusal of employment was in the month of April, 1991 and the reference was transmitted to this Court in the year 2002 which is after a lapse of 11 years and in absence of proper explanation pertaining to the long delay, this Court lack jurisdiction to adjudicates it on the simple reason that delay in raising the dispute defeats justice and equity. In this connection it is also the case of the Executive Engineer, Bolangir Electrical Division, Bolangir that his establishment now is a part and parcel of WESCO and under the WESCO administration there is no post of N.M.R. as a result reinstatement of the workman in that post cannot be imagined. In the written statement the Executive Engineer has also pointed out the ban in appointing N.M.R. issued in the year 1996 and the rules and procedures being adopted by WESCO in recruiting the employees of different categories. It is also averred by the Executive Engineer in the body of the written statement that there is no paper available in the office pertaining to the claim of the workman that he was working as N.M.R. and C. L. R. from 1986 to March, 1991. In Para. 5 of the written statement it is specifically averred that after due search the muster roll-cum-payment sheet from 20-12-1988 to 31-12- 1988, 1-2-1989 to 14-2-1989, 1-5-1990 to 10-5-1990, 11-5-1990 to 20-5-1990, 21-5-1990 to 27-5-1990 are only available and from it is forthcoming that the workman was engaged as N.M.R. intermittently for a period of 53 days from 20-12-1988 to 27-5-1990 and his claim that he was engaged continuously from 1986 till 1991 cannot be accepted. The claim of the workman that his co-workers were regularised is also denied by the management. By mentioning the above facts and circumstances the Executive Engineer of Bolangir Electrical Division has prayed for answering the reference against the workman. To buttress his claim a set of xerox copies of documents are filed. In it, the xerox copies of the muster roll-cum-payment sheet for the period referred above are also filed.

4. The workman after receiving copy of written statement has filed a rejoinder. In it, he has challenged the points raised by the management. It is the specific stand of the workman in the body of the rejoinder that the management has illegally refused employment to him and with regard to the delay it is his plea that the petition is filed in time and even though the ban order was passed in 1996, but his claim relates to the year 1991 when there was no restrictions in reinstating him which was not taken up by the management and now the technical point raised by it that the ban order was in existence cannot be accepted. In the paragraph 5 of his rejoinder the workman has stated that no document was produced by the management before the Conciliation Officer and at present

the co-workers namely, Musuru Badhia, Kalakanhu Bagarty, Baishnab Bhati, Jadu Meher, Bhajaman Disri and 4 others were absorbed in the cadre and he was only treated shabbily by the management. To sum up, the workman has prayed to reinstate him in service with full back wages.

5. Though there is no provision in the Act and rules for filing a reply to the rejoinder filed by the workman, but in the present case it is filed and in the body of the same it is specifically averred that the employees named by the workman have been regularised in service as per the tripartite settlement and office order that on completion of 400 days as on the 1st September 1981 and the 1st October 1986 a N.M.R. or C. L. R. can be regularised. According to the management in the list prepared for it, the name of the present workman is not available. Accordingly he (workman) cannot claim parity with the other workers.

6. By taking note of the pleadings of the parties, the following issues are settled in this case :—

ISSUES

- (i) "Whether the refusal of employment of Shri Kunja Bihari Mallick, N. M. R. employed in Chudapali Electrical Section by the Executive Engineer, Bolangir Electrical Division with effect from April, 1991 is legal and/or justified ?
- (ii) If not, to what relief Shri Mallick is entitled ?"

7. The workman is only examined to substantiate his case. He has also filed three certificates pertaining to his service which are marked Exts. A, B and C in this case. In addition to it, the copy of the list of N.M.Rs. absorbed in the Cadre and paid vouchers of the period as referred above which are filed by the management along with the written statement are relied by the workman and those are marked as Exts. D and E, respectively on behalf of the workman.

The management side has examined the Deputy Manager (HRD) of WESCO as the only witness to substantiate the plea taken by it.

FINDINGS

8. *Issue Nos. (i) and (ii)* — Both the issues are taken up together as those are interlinked. According to the workman, he was working as N.M.R. under the Executive Engineer of Bolangir Electrical Division from 1986 till 31st March 1991 and from the 1st April 1991, he was removed from service without any intimation though he (Executive Engineer of Bolangir Electrical Division) had allowed the N.M.Rs. of 1987 to continue in the roll and at present they are still continuing in service. In Court the workman has further stated that he had approached the Executive Engineer to absorb him in service, but it was not allowed and then finding no other alternative, he had approached the Labour Officer of Bolangir and the conciliation proceeding also ended in failure. He has prayed for reinstatement in service with full back wages. In cross-examination, he has stated that the Executive Engineer had orally told him not to work from the 1st April 1991 as according to him there was no work available at his disposal and then, he had orally approached him but he (Executive Engineer) had deferred it on many occasions by telling that his case will be taken up on the next month. In his evidence, the management witness has stated that there is no record available with WESCO in relation to the engagement period of the workman and in such a situation, the entire liability is on him to suffice it. He has stated about the availability of muster roll-cum-payment sheet pertaining to 53 days and further pleaded that the claim of the workman that he was in service from 1986 to March, 1991 cannot be accepted. The management witness has also stated about the circumstances under which the other N.M.Rs. having 400 days of experience have been regularised. He has also stated about the genuineness of the certificates produced by the workman which are marked as Exts. A and B in this case. The management witness was cross-examined by the workman. Admittedly, the management witness was not attached to the office of the Executive Engineer at any point of time and he has no idea about the omissions and commissions occurred in that officer. In his examination-in-chief, he has stated that he has acquaintance with the facts of this case. But in cross-examination, he has agreed that at no point of time he was attached to Chudapali Section

wherein the workman was working as N.M.R. in any capacity. On perusal of the oral evidence adduced by the parties and the documents filed by the workman it can be safely said that the workman was working under the management as a N. M. R. In this connection the workman has taken the plea that he was working from 1986 till the end of March, 1991, but the management witness has stated that he had worked under the Executive Engineer for a total period of 53 days. The management witness has produced the xerox copies of paid up voucher and the workman has filed the certificates issued by the Sectional Officer pertaining to his service. The management witness has not challenged the genuineness of the Exts. A and B though he has stated that he has no idea about the Sectional Officer who has issued Ext. C. On perusal of the documents filed by the workman pertaining to his experience under the Sectional Officer of Chudapali it can be safely said that he was working under the Chudapali Section from 1986-1987 up till 1990-91. Ext. E is also lending additional strength to it. In proceeding of the present type the documents which are marked as Exts. A, B and C coupled with the oral evidence adduced by the parties are sufficient to conclude that the workman was working under the Executive Engineer of Bolangir Electrical Division from 1986 up till 1991.

Though the management has taken the plea that no such document is available with them to meet the claim of the workman, but from the documents filed by the workman there is no difficulty in arriving into such a conclusion. The plea that employment was not refused to him and that his name was not available in Ext. D as he had not completed 400 days of work cannot be accepted in view of the Exts. A, B and C coupled with the oral evidence of the workman. No good ground is shown as to why the workman would not attend his work from the 1st April 1991. After the refusal of employment, he had approached the Executive Engineer and also the Labour Authority for reinstatement in service. So there is no reason for him to abandon his service. The delay aspect cannot be taken up in the present case as the workman had approached to different agencies to get the relief and the delay has occasioned because of the non-co-operation of the management. As the points raised by the management are not up to the mark and as I am of firm view that the workman was attached to the office of the management as a N.M.R. from 1986 up till 1991 and employment was refused to him in the month of 1st April 1991, so the reference is to be answered in favour of the workman.

9. As per law while retrenching a workman certain conditions as enumerated under Section 25-F are to be complied. Under the provision of the above Section, it is for the workman to show that he has been in continuous service for not less than one year under the employer, but was retrenched from service. He has also to prove that during the period of 12 months, he had served not less than 240 days. The above factors are well proved in this case from the side of the workman. I have already arrived into conclusion that he was in service under the management from 1986 to 1991. The period of 240 days as required under Section 25-F are fully covered by the workman. Though the workman was a N.M.R., there is no impediment in extending the benefits available under Section 25-F of the Industrial Disputes Act as because, a temporary workman would also be entitled to claim the benefits under this Section. In this regard law is fairly settled. The Act makes no distinction between the casual workman and other workmen. So the benefits of the above Section are also available to the N.M.Rs. including the present workman.

10. It is a well settled law that where the retrenchment is invalid in law, the workman will be entitled to reinstatement with continuity of service and back wages. The mandatory requirements of Section 25-F are not complied by the management. It is not the case of the management that the service benefits were extended to the workman while removing him from service. According to the workman, he was removed from service orally. Though in the pleading there is no clear cut mention that the service benefits available under Section 25-F of the Industrial Disputes Act are not extended to him, but from his stand in the pleading and evidence in Court it can be safely concluded that he has not received it and has raised this Industrial Dispute. Normally the workman should be reinstated in service with full back wages. The theory of 'No work No pay' cannot be utilised here as because employment was refused by the management as a result for such a long period the

workman remained out of employment. In no manner the workman has contributed for such a situation. But in certain exceptional circumstances the strict adherence of this procedure cannot be insisted. In the instant case the management witness has stated that from 1996 there was a ban of appointment of N.M.Rs. and in the meantime the office of Executive Engineer, Bolangir was brought under control of GRIDCO from O. S. E. B. and then from GRIDCO to WESCO. The employees who have been engaged subsequent to the present workman have been absorbed in the Cadre. According to the management, they had completed 400 days of work and as per the stipulation fixed by then, they have been regularised in service. No reason is assigned as to why the present workman was ignored. The answer given by the management witness in this regard is that his name was not available in Ext. D. In my opinion it is not a satisfactory explanation, I smell foul in it. The entire development is rather congenial to conclude that the workman was treated differently from that of his other co-workers. There is no pleading or evidence from the side of the management that WESCO is running under financial problem. So there is no reason to cut the back wages allowed in favour of the workman. Therefore there are good grounds to allow the reference in favour of the workman and to direct the management to reinstate him in service with full back wages. Hence the following Award :—

AWARD

The reference is answered on contest in favour of the workman. The refusal of employment of Shri Kunja Bihari Mallick, N.M.R. employed in Chudapali Electrical Section by the Executive Engineer, Bolangir Electrical Division with effect from April, 1991 is held to be illegal and unjustified. The management is directed to reinstate the workman in service with full back wages within 3 months hence, failing which the management shall pay interest at the rate of 12% per annum to the workman on the full amount of back wages from the date of this Award.

Dictated and corrected by me.

P. K. MOHAPATRA
6-2-2007
Presiding Officer
Labour Court, Sambalpur

P. K. MOHAPATRA
6-2-2007
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government